DIVORCE

BY THE SAME AUTHOR:

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DIVORCE

Translation and Preface

by

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APPROBATIONS

We have carefully read the book of Father M. Ceslas Forest, "Divorce", and we judge it worthy of being printed and published.

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PREFACE

At this time of unrest, created largely by the upheaval of war, when homes have been broken up and minds become unbalanced through physical and mental uneasiness, Peace, returning to the world like the dove to the Ark, finds a place of repose—above the breakers—in our homes and our country. It becomes the interest of the civilized world to reconstruct with what is best at hand, but with care not to discard the fundamental principles of Christianity — otherwise the structure would be of a most flimsy character. Divorce, which has invaded many countries, under the aegis of civil legislation, is a most pernicious evil—anti-national and anti-Christian. The author of this little volume has gathered some facts and statistics from the records of divorce in

France and in the United States and come to the conclusion of attempting to nullify its effects wheresoever it has asserted itself and, above all, of defending our own country and firesides against its ravages. With the intention of awakening an interest in men of thought and influence who could join in combatting this crying evil, he sounds this clarion call in defence of country, faith, nationality, our homes and society in general. Amongst the countless benefactions of God to humanity one of the most important is the nuptial bond; it is the gift of heaven, the charm of earth, the joy of the present, the promise of the future, the innocence of enjoyment, the sanctity of passion, the sacrament of love. The slender curtain that shades its shrine has for its purity the whiteness of the mountain snow and for its protection the texture of the mountain adamant. That national sanctuary

is being invaded by the polluted spirit of prayerless, heartless, remorseless divorce, and to-day religion defied, morals violated and the canons of God foully spurned invoke the protection of Christian men and women.

Admirable as this little work is, so exact in facts, so irrefutable in its principles and so impeccable in its logic, still its influence is circumscribed by the fact of its publication in French. While the good it may effect is unquestionable, still it can only reach a limited number of readers and they are of those less in need today of its warnings. That the vast English-speaking public, both in Canada and the United States, may be enabled to benefit by it and to realize the magnitude of the menace it indicates, it has been decided to translate it into the English language. If this version of Father Forest's timely and exceedingly

important work can only raise an additional barrier against the flood of misery and wrong that now threatens the whole social world, the work will not be in vain and the translator will feel that his labour has been repaid many fold. May our homes, our rising generation, our country, our Christian civilization be protected against this phantom of Evil, this curse of the present and moral danger of the future is the desire that wells up from the inmost fountains of every truly patriotic heart.

J. K. FORAN.

Ottawa, Jan. 6th, 1921.

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DIVORCE AND THE NATURAL LAW.

SUMMARY: — Principles in Modern Countries. **1° Marriage is by its Nature Indissoluble:** The theories brought forward.—The indissolubility is founded upon the primary aim of marriage. It also flows from the secondary ends of marriage.—Divorce is in opposition only to the second principles of the law of nature.—**2° The Indissolubility of Marriage admits no exception:** To admit exceptions would be risking the obliteration of the law.—Separation is the real remedy for unhappy marriages.— **3° Divorce and the Rights of Married People to Happiness:** There are married couples for whom the marriage tie is a heavy chain, but higher claims than their own demand that the chain should remain intact.—If the indissolubility of marriage makes victims, Divorce makes them also.—Divorce is no cure for unhappy homes but makes trouble in the happy ones.—**4° Divorce and the Inalienability**

of the human person: One's liberty is limited in each duty.—A person can engage the future of whatsoever belongs to him.—Conclusion.

One painful aspect of the debate, which Mr. Nickle presented to Parliament two years ago, is the small space devoted to questions of doctrine and principles. Little thought seems to have been given as to how divorce would affect the holy institution of Matrimony. There was not even question of the effects it could have upon the whole social fabric. These were, particularly for the English representatives, secondary questions, "French Questions" as they were called in 1842, in the Parliament of Kingston.

The establishment of a Divorce Court was looked upon as the most expeditious means of attending to the demands for divorce, that were multiplying more and more, and a measure of such gravity was voted with superb assurance and cold-

blooded calm by men who were conscious of continuing nothing, and having nothing prepared.

There were, heretofore, in our old enactments, issues of Christian Civilization, an assemblage of intangible principles, of sacred traditions upon which were founded the stability and continuation of Nations and of which our short sighted legislators are making a botch. No doubt society must develop, but if it wishes to do so without collision or danger, it should, while expanding, respect the principles founded upon nature and common sense, consecrated by the Wil of God, and the tradition of centuries. They are like beacon lights, in dangerous places and density of fog, which guide the vessel in her course. Should the light be extinguished or the pilot fail to keep his eyes fixed upon it, the ship would go to wreck upon the rocks.

We fear, with reason, for the future. Associations are being broken up and it is this moment that is chosen in which to attack the family and marriage which are the basis of all social order—by what right moreover? There are many things that existed before the State; there is the individual and there is the family. Therefore, like the individual, the family possesses a nature that cannot be altered by the State, which consequently the latter should respect. If, to obtain the end which God appointed in the institution thereof, marriage should be indissoluble, the State, do what it will, cannot change this. It could, of course, put aside the will of God, do violence to nature, but it could not do so without shaking to its foundation the whole social fabric. The first question of importance to discuss is therefore this one: is marriage by its

nature to be or not to be indissoluble? And we answer:

1°. Marriage is by its Nature Indissoluble

Here two opinions are advanced: the opinion of the evolutionists and that of the Judio-Christian tradition. We know the first. According to the evolutionists, the first form of union among mankind was promiscuous. It was only afterwards, and the effect of various causes, that more durable unions were contracted. Far from being a necessary law of life, family relations, at least in the actual form, would only be a conventional creation of antiquated peoples. In support of this thesis, some isolated facts are quoted that have been gathered from savage tribes, together with a certain number of customs interpreted arbitrarily. It does not come within the scope of

this work to treat the question from a historic point of view.[1]

We will simply point out that even in the opinion of Modern evolutionists,[2] the facts and usages that are mentioned are far from having the force ascribed to them.

To see therein, instead of a perversion of primitive morals, the initial stage in the institution of marriage, it must be supposed what is precisely in question that the primitive state of humanity was the savage state.

"Of the evolutionist's thesis, a coherent and seductive system was constructed, but only an ideal fabric was the outcome, an edifice in the air, so long as it has not been demonstrated, that these pretended laws are in accord with the laws of life,

(1) One might consult with profit: Fonsegrive: *Mariage et union libre:* De Smet: *Fiançailles et Mariage.*

(2) Cf.: Fonsegrive: op. cit.; p. 20.

that the interpretation put upon historic information coincides with the essential laws of the soul, or simply with well established psychological facts".[1] But, that will never be shown. It takes very little reflection, indeed, to discover that marriage and indissoluble marriage, is called for by the most imperative exigencies of nature, that it originates in the very laws of human life.

* * *

Indeed, the law which ordains the joining of the sexes is a very natural one. The force which impels one towards the other, the man and woman, is that appetite for enjoyment which has its root in the depths of our being.

Nevertheless, this appetite itself is only the exterior aspect of the sexual ins-

(1) P. Castillon, S.J.: *Mariage et Divorce; Dictionnaire Apologétique de d'Alès*, Tome III, Col. 94.

tinct; it is only a means chosen by nature to reach its aim. The pleasure that is attached to the acts most essential to life does not comprise within itself its end. It is ordained for something more noble, more elevated; in marriage it is ordained for the procreation of the child.

"At the sacred hour of their union," writes M. Fonsegrive, "the man and his wife are the priests of life. They obey an imperious and redoutable law. They weld a link of the chain which binds the humanity of the past to the humanity of the future; it insures the existence of mankind to come, it works thus to augment in the world the aggregate of life, of conscience, of intelligence, of progress, of morality, of beauty."(1)

Marriage, such as God has willed it, has the justification of its existence in the child. It is not so much for themselves as

(1) Volume already quoted, page 287.

for him that the man and the woman become united. If, therefore, the reign of indissolubility is of all the matrimonial conditions that one which favors most the procreation and education of the child, there must be no hesitation in adopting it as the one prescribed by nature itself. This we will proceed to establish.

At the time of the discussion of the law of 1884, in France, the partisans of that law guaranteed that it alone would wipe out the decline in birthrate. It did no such thing.[1]

On the contrary, the truth is that it did not accelerate it to any considerable degree. The decrease of births, in France, spring from so many and such deep sources that the influence of Divorce remains almost imperceptible. It would be

(1) In a lecture given at the Academy of Moral and Political Sciences, in 1902, M. Louis Legrand established the fact with figures in support of it. *Questions actuelles:* vol. 66, p. 17.

quite different in Canada, in the Province of Quebec, above all, where the families "à l'américaine" and "à la française" do not exist. Could one easily imagine a family of ten, twelve, fifteen children dividing up, some on one side, and some on the other? It becomes quite evident that the instability of the home is one of the principal reasons of its depopulation. Each child, that makes its appearance in the family becomes an obstacle to the destruction thereof; it forms a new link, one of flesh and blood, a link of love as well, which binds the parents one to another. Therefore when the latter cease to have confidence in the future, when they will perceive the possibility of having to reconstruct their lives, is it credible that they should wish to accumulate obstacles and multiply bonds? Would they not, on the contrary, wish to be free of all impediments in the race for happi-

ness, which they understand to be the principal aim of their existence?

Statistics are there, moreover, to prove that the homes most broken up by divorce are those in which there are fewest children. Thus, at Paris, from 1887 to 1905, 46.7 per cent of the number, of the homes dismembered by divorce were homes without children: 21 per cent of them had one; 10.7 per cent two; 3.30 per cent three; 1.1 per cent, four, etc.

Divorce, therefore, dries the source of life. Instead of remaining, what it was in the Mind of God, a blessing and a joy of home, the child becomes an obstacle which must be done away with at any price. The races weaken. And, one day—like at the end of the Roman Empire—the barbarian will come and fix his abode in the homes that cowardice leaves desolate.

It is not only procreation, but also the education of the child which calls for the indissolubility of marriage. When a man and a woman, in fact, have given birth to a child, their work is not done. It should rather be said to commence. Heretofore, their life belonged to themselves, henceforth it belongs to them no longer. Heretofore they could think of themselves, henceforth they must think only of him. It is not for themselves but for him that they are united. He is of the future, he is that by which their own lives will be prolonged and their race continued. He has therefore, every right; they but only duties. "When the fruit appears" says Mr. Fonsegrive, "the flower has lost its rights and it is by this new existence, their issue, that parents henceforth should find their own development."(1)

Hence, our daily experience shows,

(1) Work already quoted: p. 317.

that to come to a good end, the work of the formation, religious, intellectual and moral of the child requires union of the whole life. The child must have, not a home, but its home; not parents, but its own parents; not only educators of any kind, but its natural educators.

In a very remarkable study, to which we can only refer our readers, a collaborator of "La Grande Revue" has shown not long since, "The material, moral and social situation of the children of divorced parents as inferior to that of children living in a united family, that it is equally inferior to those orphans of father and mother, at times, even, to that of natural children."[1] Statistics support this assertion. In two reformatories in the United States, that of Ohio and that of Illinois, three quarters of the inmates

(1) Renée Pingrenon: *Les enfants d'époux divorcés; La Grande Revue*, 1er Novembre 1903.

came, a few years ago, of families, that death and above all divorce had broken up.[1] In destroying their home, they were thrown defenceless into all the seductions and vices of the street.

From all that we have just said, it follows that the essential end of marriage is the child. This aim is not something optional, variable, left to the caprice of the married couple. It is imposed upon them, on the contrary, by the most imperative necessities of life. It is the only reason of the existence of the sexes. And as divorce attacks the child's life first in its very source, then in its development afterwards, it follows that divorce is a thing contrary to nature. Our representatives in Parliament can make all the laws they wish, but they will be as unable to change this as to take the spots off the leopard.

(1) Cf.: Speech of Hon. Rodolphe Lemieux; House of Commons, 14th Feb., 1916.

We come to the same conclusion when considering the secondary end of marriage that is to say, what the married couple should seek for themselves in wedlock. We are not evidently speaking, here, of more or less well assorted unions, but of the ideal union, of the one required by nature and which each one should strive to realize. And we state that such a union cannot be imagined without indissolubility.

First of all, there is something of the Eternal in the sentiment which impels one towards the other, the man and the woman; something irrevocable in the mutual gift which they bestow of their bodies, their souls, and of their whole being. What they seek, in thus uniting their lives, is to found a community of which the child, no doubt, will be the end and crowning joy, but wherein each of them also may find assistance, possess

the soul which completes his soul and pursue in love and peace the moral perfection which should be the aim and justification of every existence.

Therefore, as Combier said, "Divorce is an obstacle to the union of souls, to mutual affection and to the reciprocal confidence which constitutes the dignity of marriage."(1)

In taking from love its eternal character it becomes a purely physical appetite. In authorizing the wedded, to seek new experiments in happiness, they take from marriage all that is noble and serious. These will look for nothing farther than the satisfaction of their instincts. Instead of remaining, as they were in the

(1) *Essai sur le divorce et la séparation de corps:* p. 431. S. Thomas wrote thus: "The mutual love of the married couple will be more constant when they know themselves to be inseparably united; there will be more solicitude on their part, more vigilance over their domestic concerns and goods if they are persuaded that they will retain possession of them all their life "

design of God, the union of two souls, of two lives, there will be nothing but the union of two desires.

It is the woman who loses most in this dispensation. It is only in marriage, and in indissoluble wedlock that the wife is a companion; everywhere else she is only an object of pleasure—"Divorce" says M. Morizot-Thibault "interests the husband less in the person of his wife than in her flesh, less in her mind than in her charms. Therefore, he is incited to leave her at the moment when age has robbed her of her beauty, that is to say, at the the time when she has acquired more claim to greater protection and becomes herself a more solid support".(1)

In this also our legislators can make

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(1) Article quoted: p. 29, Leon XIII said in the same sense: "By divorce, the dignity of the woman is lessened and lowered for she runs risk of being abandoned after having served the passion of man." *Arcanum divinae sapientiae.*

no change. And as nature will not come down on their laws, it only remains for them to bring their laws down upon her.

* * *

This teaching of Christian philosophy Pie IX. did not hesitate to confirm by his supreme authority. Among the condemned propositions which he inscribed in his syllabus, the 67th reads as follows: "Marriage is not indissoluble by its natural right, in different cases, divorce properly speaking may be sanctioned by civil authority."(1)

(1) Here theologians customarily ask themselves if divorce is opposed to the primary principles or to secondary principles of the natural law. "Are contrary to the first principles of the natural law, first the acts which directly oppose the final end, those which destroy the relations which should exist between God and man; afterwards the act which tends to undermine the very basis of society and thus overthrowing by their nature essential relations between man and man and necessary to the common good. Are contrary to the secondary principles such acts as do not overthrow established order

2°. The Indissolubility of Marriage Admits of no Exceptions

But, we may be asked, can we not find couples sterile or otherwise, to whom life together becomes impossible? Therefore, what principles can you invoke by which you will oblige these people to refrain from breaking their chains and making over their lives?

Always in the name of the principles of the natural law. The natural law is not a thing that varies according to particular cases. It is based on results produced

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but are of a kind that injure or counteract it more or less." (De Smet: *Fiançailles et Mariage*, No 172.) According to these principles, it is evident that divorce such as it exists in our modern society is in opposition only to the secondary principles of the natural law. If it makes it more difficult, much more hazardous to obtain the principal end of marriage, it cannot be said to prevent it altogether; if it tends, by attacking family, to shake society, we cannot say that it aims at least directly at its destruction. But it remains even so, a measure against nature that no legal inactments can legitimize.

upon humanity in general. Of its nature marriage should be fruitful and indissoluble. If it be sterile, it is by accident. The natural law is not concerned with that.

No doubt, the natural law could admit of an exception, but upon one condition only; that is that this exception would not come and destroy the law itself, as is the case in divorce. In fact, we will consecrate the greater part of the following chapter to demonstrate how the logical outcome of divorce is free love. The moment the state recognizes the right of the individual before that of the family, from the day it aggregates to itself the power to touch such a sacred thing as marriage, nothing else will stop it. From divorce for adultery we slip imperceptibly into divorce by mutual consent; from divorce by mutual consent we pass on, by an implacable logic, to divorce by

the consent of one of the parties. Nothing remains but to suppress the formality of marriage which has become obsolete, to terminate in what the evolutionists regard as the initial stage of the human species. Either indissoluble marriage or free love, no other alternative is possible.

* * *

Evidently there are cases to be met with wherein life in common has become impossible. In all the old Christian legal inactments, provision has been made for this by authorizing the separation of bed and board. Only as the evil comes from contact and not from the tie, it permits separation, but does not allow the breaking of the tie itself. This survives love and happiness, and survives with all its rights. It is distended but not broken.

And, as it is not broken, there always remains a hope of one day being renewed

and reuniting two lives. "According as the wrongs wear out, the motives for separation lose their strength. Sometimes eclipsed love which patiently abides its time, slumbering in the midst of petty spites, awakens little by little. It begins to feel its way in the shadows. Let the occasion arise, a great common sorrow, or a joy they are called upon to share together; a meeting, then a reconciliation; the simplest thing it takes sometimes to rekindle the flame, and the fire burns once more upon the hearth."(1)

In separation, behold the real remedy for unhappy marriages, the cure approved by centuries. As to divorce, it cures also; but after the fashion of violent remedies that inoculate the whole organic structure, with a deadly germ.

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(1) Dom Besse: *Récente évolution du divorce en France; Revue pratique d'Apologétique.* Vol. II, p. 338.

3°. Divorce and the Right of Married People to Happiness.

We now come to the reason alleged in favor of divorce. All what we have read upon this subject resolves itself into this: the couple would have the right to happiness at any price at the expense of society, of the child and even at the expense of one or the other of the conjugal partners. Heretofore, there was only question, in speaking to married people, of their duties; to-day there is question only of their rights.

Some solitary unhappy circumstance is taken, enlarging upon it at pleasure; we are shown these unfortunates drastically welded together and held by the bonds of marriage. We are pictured the poor unhappy spouses, without any fault of their own, struggling with rage in the

meshes of a net that only death can break. These statements are supposed to prove something, but they prove nothing whatever.

* * *

That people are sometimes rendered unhappy by marriage no one will deny. There is no human institution exempt from sorrow. Treason, discord, misery of all sorts creep sometimes into homes apparently of the best, robbing them of a happiness they had hoped was as eternal as their union itself. But these are individual evils. The wrong is to wish to build upon this a drastic legal enactment. The law—we forget too often in these days of individualism—aims not at protection of the particular interests of each one, but the general welfare of society.

Between two measures, one of which

protects the happiness of the individual at the expense of society, and the other the happiness of society at the expense of the individual, the legislator worthy of the name has no right to hesitate. It is the happiness of the individual which must be sacrificed.

"Permit me" says on this subject, one of the personages of Mr. Paul Bourget, "a very vulgar comparison, but a very clear one. A ship is in a port where one of the passengers wishes to land. It is for him of the highest moral and material importance. There are some cases of plague broken out on the ship. The civil authorities forbid the landing for fear of contagion. Would it be just or charitable to give ear to the supplications of this traveler at the risk of contaminating a city of a hundred thousand inhabitants? Evidently not. Here, then, is a circumstance wherein justice and charity

exact the sacrifice of the individual, in favour of the general interest. This principle dominates society."[1]

There can be no society, indeed, without these individual sacrifices. Social life is made up of them: expropriations and prescriptions in matters of property; health measures are so many attacks upon the liberty of every one; sacrifices even of life for the safety of the country. All these things, and many more, show that in putting above the individual right to happiness of each of the married people, the right of the family and the social rights, we only apply here the principle admitted everywhere else.

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And then, if it be true that indissolubility produces victims, it is true that divorce makes them also. Only whereas

(1) *Un divorce*, p. 26.

the victims of indissolubility, are generally giddy heads who have made a lottery of marriage, an association of interests or of passion, culprits who have betrayed their promises, profaned their vows, the victims of divorce on the contrary are more frequently the weak and the innocent, the old wife and the child of tender years, those whom the law should protect, and which it sacrifices.

We have already dwelt long enough upon what divorce does for the child, we do not require to come back to it again. We will add only a few words as to the situation in which woman is placed.

This question, as we have said above, was treated in a perfectly competent manner by Mr. Morizot-Thibault, in a communication made to the Congrès d'Economie Sociale, in 1911. We take from it the following page which requires no comment. "I was told of a husband

belonging to Parisian society; he occupied an enviable official position. Disgusted with his wife, he beats her so that she will be forced to seek a divorce. She, holding to her religious traditions, refuses to ask for it. And, since then, she suffers in silence because the law has not opened to her a way out in accord with her religious convictions."

"It is in the working classes," he adds, "that these extremes are more frequent, because an insufficient instruction and education had made the husband less disposed to respect his wife. It is in such cases that the rupture of the marriage bond takes place more often. In 1897, for instance, the number of divorces mounted up among the working men to the enormous figures of 5,943. It will never come under statistics to declare in how many cases the woman's will was forced. I had the honor of discharging at

Paris, for nearly three years, the function of public prosecutor in the department of divorces. I saw unhappy women who came to ask the protection of my office. And when I asked them the motive of their action, a certain number told me they were going to law impelled by coercion. And I have consulted the statistics, and see that since 1884, demands based upon excess, ill-treatment and grave bodily harm had augmented in alarming proportions. The woman had there met oppression in the very institution meant for her particular protection."[1]

Moreover, the wrongs of marriage are greatly exaggerated. If so many people make mistakes, it is because they look for what after all is secondary, and that they never seek that without which there can be no mutual understanding—Duty.

If you hear a certain number of giddy

(1) *Questions actuelles:* vol 60, p. 23.

heads, giddy heads above all, that we meet in novels, on the stage and sometimes in life, you would think that they went to housekeeping expecting to find therein the maximum of love. But love and pleasure are not everything in marriage. "Love helps to build the nest; it does not supply the durable and solid materials."(1)

The aim of marriage is work, devotedness, fidelity. It is above all the child. Let happiness come if it will, and if it come not at all, one has no right to keep spite against marriage, and to ask a release from the law. We seek rather in the duties it imposes a consolation that it seldom refuses.

What would become of the good middle class of humanity, those who work, who struggle and sorrow, if such a sacred

(1) Henry Bordeaux: *Le divorce dans le roman et le théâtre; Le Correspondant*, Tome 219, p. 655.

law as that of marriage were to be overthrown, because of a few misunderstood ones who go from house to house exposing their anxieties and the void in their heart? "A new husband"; says to one of these misunderstood ones, a personage of Mr. Hervieu,[1] "But my poor dear, you will take an aversion to him in his turn, as you took to the last one, for indefinite reasons of your own imagination." These words alone would suffice to condemn divorce of which this drama was intended as an apology.

No, divorce does not cure unhappy marriages. It might better be said to favour them, that it offers itself as a recompense, as a prize. In any case, it upsets the good ones and this is what classifies it definitely among measures that are anti-social.

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(1) *Les tenailles.*

The first condition, the principal one assuredly upon which the marriage may be a happy one, is that it be not lightly entered into. They should take it as a serious affair, the gift, reciprocal and without recall, of their lives. They should prepare for it with care, multiply the preliminary inquiries as to the tastes, qualities and temperament of him or her they wish to marry.

But why all this prudence, if marriage be no better than any sort of venture, a contract that can be cancelled at will? With divorce one gives oneself without reflection and, what is worse again, gives oneself with the assurance of the power one day to recall the gift. This perspective leaves in the union an open fissure that time and circumstances will undertake to enlarge.[1]

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(1) Divorce is opposed to the real attachment of the spouses one for the other, for we form no real attachment

There is indeed, in each conjugal life, even the best, a critical time. It comes sooner or later, but it is rare that it comes not at all. The real being beloved shows through the meshes of his love. The honeymoon over the daily contact makes him appear as he really is. And then, we let ourselves believe that life in pairs—which let it be said in passing, represents at times a goodly sum of caprices, of manias, even of faults discovered—could not go on without certain little shocks which call on either side for the constraint of self-denial at all times. Let graver wrongs appear also, then the critical storm lowers. The crisis which in the greater number of cases could be diverted into mutual pardons and the attainment of a happiness which may still be revived, terminates by divorce in

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unless when we are sure of having the power that is remaining always attached. Combier: work quoted, p. 431.

the irreparable. The breach being open, in a moment of passion, one rushes into it headlong.[1]

Do not believe that we exaggerate. In the greater number of countries, separation of bed and board was heretofore exceptional; to-day divorces swarm. Have the married people become more insufferable? Probably not. Only they make less efforts to put up with each other. Divorce has taken away that, without which conjugal life is impossible: Love which endures is resigned, pardons and patiently waits.

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(1) "I have made vows, eternal vows; well then, by the faith of an honest man, my vows keep me and my promises bind. And you believe that having vows of a day we could resist! Why no, we resist, bound by the terrible chain of an irrevocable oath, supreme guarantee against the weakness of the man distrustful of himself!" P. Didon: *Indissolubilité et Divorce*, p. 151.

4°. Divorce and the Inalienability of the Human Person

In his report to the Société d'Etudes Législatives in 1906. M. A. Tessier, searching for a starting point for the greater extention of divorce, said: "The question turns upon individual liberty, on the inalienable right of each one to dispose of himself."(1)

This is the second argument in favour of divorce. It has, in the mind of those who employ it, the advantage of furnishing the preceding argument with a philosophic basis.

But this principle which is scarcely acceptable when there is question of the individual taken singly, is no longer so at all when considering the individual who becomes husband or father. Entering into

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(1) *Bulletin de la Société d'Etudes Législatives, 1906*, p. 119.

the family class, the individual acquires a responsibility, contracts duties which so far limit his primitive liberty. Before the marriage, he could consider himself as master of his destiny, as being in some way his own end; afterwards he can do so no longer. He belongs to his wife, he belongs to his children, he assumed another aim in life from which he can never escape.

But, had he a perfect right to thus pledge his future liberty? Here, we come to the pith of the objection. One of the dogma of the new religion is, that a man cannot dispose of his person for life. And if that be true with regard to the perpetual vows of ecclesiastic celibacy, it is truer when it comes to the question of marriage. In as much as the free and voluntary gift from the woman to the man and man to the woman is noble and beautiful, in so much it becomes im-

moral and repugnant when it is imposed by law; Mr. Accolas goes so far as to call it "legal violation".[1]

"The only consent they recognize in marriage is the consent which springs from the heart regenerated by itself every day of its life, renewed manifestation of the permanent desire to be united."[2]

That a man may not be able to totally renounce his person for another man's benefit, that he cannot bind himself to follow blindly another's will, is evident. But that is not the question here. The question is to know whether no action is moral which is not spontaneous: that which pleases me at the moment I perform it. Reduced to this simple statement the objection is not even worthy of further discussion.

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(1) Cf. Fonsegrive, work already quoted; p. 272.

(2) Paul et Victor Margueritte: *L'élargissement du divorce*, p. 6.

If I have the right to dispose of what belongs to me, I have, moreover, the right to dispose of everything that I own. That the state should regulate the exercise of this truly dangerous right; that it prohibits it to me until I have reached the age of which I may become responsible for my engagements; well and good!

But to interdict me from disposing of my life as I think right and proper, would be to limit my freedom in the very name of liberty.

To exact that the gift of one's self should always be revocable at will, is to legitimize before hand and at one blow all that we would forfeit and every oversight of our sworn faith. Thus a man would have enjoyed a woman's youth, her beauty, he would have thrown upon the world weak and defenceless beings, and, one day, because it no longer pleases him to be a good father and faithful

husband, he would shake off his chains under pretext of it being immoral to sacrifice himself and not to be able to live the life of his choice? Strange morals, most surely!

No, there is no true liberty but in the pursuit of one's voluntarily accepted duty. And the duty of the man who once pledged his life, is to remain unto the end faithful to his promise.

* * *

Conclusion: As we see by the preceding pages, divorce is, without contradiction, one of the very gravest measures upon which our parliamentary representatives have been called to vote. It puts the institution of matrimony in question and makes of it a temporary association of interests and of passions. It lowers the woman and sacrifices the child, it introduces among the people a

new conception of life. Little by little it detaches souls from duty to spur them on towards pleasure. No doubt, it will not produce all these effects at one bound. But it is a breach formed in the fabric of public morals over which we have jealously watched up to now. It is an initial concession to the least healthy element; concession which, alas! entails many others. We have no fear in affirming that a victory for divorce would be a moral defeat.

CHAPTER SECOND.

DIVORCE AND SOCIAL ORDER.

SUMMARY:—Divorce is a part of the revolutionary campaign for the emancipation of the individual:—**1° The Family is the Foundation of Social Order.**—**2° Divorce is the Desolation of a Multitude of Homes:** Statistics.—Deception between married people.—Complicity of Judges.—**3° The Logical End of Divorce is Free Love:** 1st stage: Mutual consent; 2nd stage: Unilateral consent.—**4° Divorce and a few Symptoms of Social Unrest.**—Statistics and explanations.—**Conclusion.**

In the campaign which has been on foot since the Revolution against social institutions as fashioned by Christianity, the burden of the efforts put forth seems to be directed, during these later years, against the family. They have understood that in order to reach the complete emancipation of the individual, which is their dream, there remains but this

ancient stronghold to carry, and they have mobilized against it all the powers of dexterously managed legal enactments and all the seduction of their literature. Fidelity, fecundity, marital and paternal authority have been debated, mocked, scouted and even openly opposed.

But the blow most direct and deeply felt which has been aimed at the family is without doubt and beyond contradiction, that which reached the indissolubility of marriages. It may be that our Canadian Legislators ignore to what conception of society divorce brings us back. what are the absolutely revolutionary consequences that we expect of it. We could say of such laws as these what Joseph de Maistre said of false ideas: "They resemble counterfeit money struck by rogues, and spent afterwards by honest people who believe it good." But, whether they will it or not, divorce is nothing

else than a thinly veiled systematic destruction of the family, and thereby of society of which the family is the most solid foundation.

The apostles of divorce do not find themselves in fault by upholding it. Take, for example, the writings of the brothers Margueritte, the two authors who have perhaps done the most to extend divorce in France: "Two opposite conceptions are at war: one embodies duties and the service of society, the other, the rights and revolts of the individual—the same yesterday and to-morrow. And in every French home, more or less, this bitter drama is enacted: there is a loss of equilibrium between the education handed down completed by our parents and the underhand aspirations of our sons and daughters. Social ties tend to break; a breeze of independence blows; the family creaks, dismembers, because now an im-

perious problem is proposed: must we act according to the example, the voice, the principles, the prejudices of the dead, or, revising them, seek to procure for the living a new moral code?[1]

Before this problem the brothers Margueritte do not hesitate: they will embody "the revolts of the individual against the servitude of society." And to accomplish the triumph of their conception, they find nothing better than to attack the stable French homes and seek to demolish them: they would become the apostles of divorce. We may deplore their warfare, but cannot fail to admire the exactness of their vision.

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(1) *Les deux vies.*

1°. The Family is the Foundation of Social Order

The family—traditional sociology has made this one of its axioms—is the corner stone upon which rests the whole social edifice. In going over the history of different societies, we come to the conclusion that the strong ones are those whose laws and morals uphold the family tie, and the weak ones, those who relax that tie to give more individual liberty.[1]

The reason of this is evident. A society is not founded upon the individual. The individual is the changeable, the ephemeral, that which passes and disappears leaving no traces. The only element which is stable and durable is the family. It has been said:[2] "The family is time behind the individual"; and this is true.

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(1) Paul Bourget: *Le tribun*, Préface.
(2) Paul Bourget: *Le Tribun*, Préface, p. XXXV.

It is through the family that the present is bound to the past and a continuation thereof. By it and in it are kept these characteristics, morals and traditions which are, so to speak, the soul of the race. It is therefore upon it, and it alone, that those should rely who desire to live and endure.

In another order of things, the family is the school in which each of us makes apprenticeship in the virtues of good citizenship. Formed at home to obey, to respect, to feel ourselves mutually responsible one for another, we bring these principles with us into our public lives. These domestic virtues have only to broaden a little to become civic virtues.

What, moreover, is the fatherland for most people, if not the family itself, the corner of the earth in which they were born, the house which shelters their dear ones, the cemetery wherein sleep those

who have preceded them here below and those of whom they are conscientiously continuing the work and the lives? Suppress all that, and fatherland would become for them a word without meaning, something purely abstract: "the sans-famille" will always be "the sans-patrie".

These few short reflections will suffice to prove an axiom found in history. The family sets the standard of society." Whence comes it that every law which strengthens the family relations, which promotes its cohesion and endurance is a social law; every law on the contrary, which tends to break up this grouping and renders it unstable is an anti-social law.

2°. Divorce is the Demolishing of a Multitude of Homes

In the space of twenty years, from 1887 to 1906, there were nearly a million divorces in the United States, exactly 945,625. There were granted in the year 1916 alone, 112,036, which makes a litt'e more than one divorce in ten marriages.[1]

This, it will be seen, must entail certain ruin of the family at an early date. One hundred thousand divorces a year make two hundred thousand wedded people, who, after having destroyed their homes, menace the security of others. It is so many families separating with scandal, creating between them an abyss of spite and enmity that time might perhaps be powerless to fill up. It is, lastly, a considerable number of children left to

(1) The number of marriages in 1916, was 1,040,778.

themselves or pulled about in every sense and in every case deprived of that first formation that the father and mother alone can give. Behold the schedule of social advantages that our neighbours derive annually from their law of divorce. And the evil is becoming worse and worse.

No doubt, we believe we are strong enough in Canada to keep the number of divorces well within certain restricted limits. Other peoples have thought so too. But they have learned at their own expense that it is easier to keep the door shut against passion and disorders than to keep it half ajar once it has been opened.(1)

Hence when the law of 1884 was passed in France, "it was believed certain that

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(1) "Keep the number of divorces within foreseen limits is as difficult as to quench when in full blaze the flame of the worst cupidity" Léon XIII; *Address* of 18th December, 1901.

the use of it would be circumscribed within very narrow limits, that divorces would only replace separations of bed and board and would scarcely exceed their number."[1] Subsequent events have completely belied these favourable prognostications.

In the period of fifty years which had preceded 1884, the annual average of demands for separation of bed and board was 3,500. Then, were granted in 1900, 7,820; 10,573 in 1906 and 14,579 in 1912.

The same advance is felt everywhere else. In Belgium, the number of divorces were 81 in 1870; 373 in 1890, and 1,039 in 1920. In the United States, there were in 1890, 53 divorces in every 100,000 inhabitants; there were 73 in 1900; 84 in 1896 and 112 in 1916.

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(1) Mr. Legrand: Communication to the Academy of moral sciences; *Questions actuelles*, Tome 66, p. 19.

Besides they had to reckon thus far with a certain instinctive repulsion latent in the heart of nations formed by twenty centuries of Christianity, "this Christian spirit which survives and is floating about in centres, wherever emancipated marriages have been introduced, delays the development of the evil."(1) But what was still true yesterday is already less true today and will not be so at all tomorrow. One becomes familiar quickly with a disorder which is authorized by law. Obstacles subsist, but the school, the newspaper, the novel, the theatre will soon have done away with them. Divorce will creep into the morals and on that day the family will have been a thing of the past.

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(1) P. Castillon, S.J.: *Mariage et divorce; Dictionnaire d'Apologétique de d'Alès*, Tome III., Col. 101.

These consequences are fatal. We can prevent divorce from being implanted in our midst; but once it will have been definitely implanted, having its special laws and regular courses, it will no longer be possible to wipe out its ravages.

"Divorce," says Mr. Morizot-Thibault, "will always be, in itself, an element of social disorganization. The wise multiply the formalities and put as many obstacles as possible in the way; but it is of a nature to glide past the obstacles and overthrow all these provisions. When it was decided that the marriage could be broken, a fatal element was infused into the principle of life. The senses overbalance the spirit. The union is dissoluable. If so, why should I remain married when my wife displeases me? You have imposed prudent limits upon me. You are a wise man, oh legislator! but you have forgotten that all your restrictions

will disappear before the principle and that your prudence will one day become the play of my will. Then deceptions are born which divert the law. We have seen adultery provoked or pretended. It came out in a case pleaded before us, that in Paris girls are kept whom wives can procure for the purpose of inciting their husbands to the violation of their conjugal duties. An agency also has been organized with the help of which comedies are enacted wherein pretended adulteries procure for the conjugal partners the means of divorcing."(1)

At the moment when we are ready to let loose upon our country the same scourge that ravages France, it seems that a testimony of this kind emanating from one of the first magistrates of France, is of a nature to make us seriously reflect.

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(1) *Questions actuelles*, Tome 60, p. 28.

What augments greatly the dissolving property of a law, like this one of divorce, is the fact that it is rarely strictly applied. Having become the unconscious accomplices of frauds that they cannot help, the judges let themselves be carried away with the current and open wider the gates that they should have closed.

Mr. Morizot-Thibault quotes the case of that judge called "Le grand divorceur" who, at a single session, had pronounced 294 judgments of divorce. Here is the resounding protestation that this fact called forth in the Figaro of the 17th December, 1898: "The Fourth Court of the Tribunal of the Seine gave a hearing which lasted four hours and during this time pronounced a little more than one divorce a minute. All this is done as nicely as possible by means of three gentlemen in robes who mutter, a grinning gentleman who is supposed to demand, and a fifth

gentleman who takes notes. This vestibule of social hell, manned by serious men, who undo society by means of the law and under the image of Christ, looks very well. Only all this will be repaid, you may be sure; there is compensation in everything. Through the fault of the legislator with the complicity almost incited by justice, free love little by little replaces marriage. It destroys the amily. It gives the man over to alcoholism, the woman to prostitution and the child becomes precociously vicious. Facts like these cast a shadow of anxiety over the whole community."

3°. The Logical End of Divorce is Free Love

There is, moreover, only two ways of considering marriage. Either, it is considered as a contract of the moral order, intangible and sacred, of which the

principal end and the true reason of its existence is the child—this is the indissoluble marriage such as God wills it, and such as the Church had imposed upon the old countries of Europe. Or else, we look upon marriage as a free association of two persons with the intention solely of procuring their terrestrial happiness, and then, not only is this union not indissoluble, but its real form, the one in which it will fatally terminate, is free love.

From the moment you admit that marriage has no further aim, higher than to permit the husband and wife to live their lives, to realize their aspirations after love and happiness, it becomes evident that it must cease with the gratification of the passion and the weariness that follows it. Here is a man and a woman who have exhausted all that dual life had promised of enjoyment, what in-

ducement will you give them to continue to live together? Will you speak of the child?[1] You yourself have taught them that it was unnecessary to think of him. Will you tell them that marriage is a contract? They will answer, in your own words, that marriage being a contract like any other, should be dissoluble by the consent of two parties. Will you bring up your law in opposition, which does not admit of divorce simply by nutual consent? They will make answer that nothing easier than to twist your law. The cases they anticipate they will create or stimulate, and the trick is turned. These people will remain a year or two together, then each one will take back his or her liberty without you being able to prevent it.

In the testimony of Mr. Emile Fa-

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(1) M. Cornely: *Questions actuelles*, Tome 60, p. 27.

guet[1] the nine-tenths of the divorces annually granted in France a few years ago were divorces by pretended mutual consent. There is no doubt that our modern law-givers will end one day or another by introducing into their divorce laws what there really exists though they do not admit it. Minds, usually well balanced, impel towards it. "What I would ask" writes one of them, "would be to consecrate this process of divorce by regulation. So that, instead of a divorce under pretence of mutual consent easy to obtain, we would have mutual consent frankly admitted by law, but difficult to obtain and restricted."[2]

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(1) Cf.: Fonsegrive: op. cit., p. 69.

(2) Cf.: *Bulletin de la société d'études législatives, 1906*, p. 195. Mr. Faguet, while considering divorce as element of moral anarchy, said in the same sense: "I like to be frank, and hypocrisy does not please me a bit. Let us make the law of 1876 what it contains unadmittedly. Let us make the law of divorce by mutual consent." Cf.: Fonsegrive, op. cit., p. 169.

Divorce by simple mutual consent would be the first step towards free love. There will be a second one. "Mutual consent," the brothers Margueritte stated in a petition presented in the French Chamber in 1900," is not sufficient. It might happen, that of two beings united together, one through meanness of soul, vengeance, cupidity or hatred, would wish to restrain the other from proceeding to the execution of a contract henceforth devoid of lofty principle, degraded into all that is sordid and despotic. Would we admit that in the XXth century, when the law has abolished slavery, interdicted perpetual vows, another law permits that one being remains subject to another, until death?" And they conclude by claiming divorce by the persistent will of one alone.

They were logical at all events. If the law has no other aim, indeed, than to

ensure the happiness of man and wife, it should be made to ensure it for each one of them. It should therefore not permit that the will of one should ever become an obstacle to the happiness of the other. No doubt, the husband left in spite of him would be sacrificed; but you have taught me that in this race of passion after pleasure, no need to count the victims. You have taught me to sacrifice the child; why therefore should I hesitate to sacrifice the mother also? Would you mention the contract as an objection? I would answer that the human person is inalienable, that the only consent valid is "the consent which springs from the heart, reborn of itself day by day, unceasingly renewed manifestation of the will to be united."(1) This man would consequently follow his caprices without

(1) Paul et Victor Margueritte. Cf.: Fonsegrive: work quoted, p. 264.

you being able to prevent him: your principles prohibit you.

Moreover, in looking over certain legal enactments, those of the United States for instance, we come to the conclusion, that divorce is nothing more than a question of simple formalities. There is scarcely any couple which could not find in some one of its seven paragraphs, some pretext for breaking off.[1]

Therefore, when men and women have come to the point of taking and leaving each other like the beasts of the field, we really do not see why they would insist on going through the formalities at church or before the magistrate. Free love would take the place of marriage. In certain

(1) Here, for instance, is the paragraph seventh entitled: All other cases.—"Includes, whether occurring separately or in combination, conviction of felony, impotency, insanity, imprisonment in penitentiary, incompatibility of temper, mental incapacity, pregnancy before marriage, voluntary separation, other minor cases not here enumerated and unknown cases."

countries it has already done so. Here is the statement of Madame Arvede Barine: "Outside of those countries where irregular marriages are numberless, many people, quite undreamt of in the magic lantern of Paris, have come to that very conclusion,—the suppression of official ceremonies".[1]

Modern societies seem, moreover, willing to push the matter by suppressing, more and more, the inequality existing in the ancient Christian laws, between the wife and the concubine, the legitimate and the natural child.[2] There remains public opinion to cope with. But the novel and the theatre have taught it to be astonished at nothing. And a thing at which we are no longer surprised, is something which is not far from being accepted.

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(1) Cf.: Fonsegrive: Work quoted, p. 179.

(2) Cf.: Henry Taudière: *La famille, Dictionnaire d'Apologétique de d'Alès*, col. 1887.

In a speech given the 13th June 1882, Mgr. Freppel said: "In opposing individual liberty to the indissolubility of marriage, you will not be long going beyond the law of 1803, further than the law of 1792, you will reach the doctrine of free love, that is to say the ruin of domestic society."(1) All the same, divorce became law in 1884. But, as if it were an echo of the words of the great bishop, the Jew Naquet, a promoter of this law exclaimed triumphantly twenty-six years later: "I am convinced that we are advancing towards free love, that is to say towards the abandonment of all the administrative formalities and all the judicial impediments which at this moment obstruct the portals of entry and exit of marriage."(2)

Joseph de Maistre said: "The French

(1) Cf.: De Smet: Work quoted, p. 252.
(2) Cf.: De Smet: Work quoted, p. 252.

will go to the full length in error." In this question of divorce, they are not the first and they are not alone. It is a descent on which we need not embark, but upon which it is not possible to stop once we have started. The evolution may be going on more slowly in some countries; but it is fatal. Either indissoluble marriages or free love: We must choose.

4°. Divorce and a few Symptoms of Social Unrest.

We have just seen that divorce leads directly to the destruction of the family. This is the first wrong against society; but not the only one.

Statistics have established that the number of criminals, insane, suicides, is proportionately tenfold in the divorced. This is a universal and incontestible fact. The following chart proves it in the case

of suicide. We borrow it from Mr. Augusto Bosco.[1]

The same correlation exists between the number of insane and of criminals and that of divorced persons. This correlation nobody will deny; the only difference is in the way of explaining it.

Some say that criminality, folly, suicide and divorce are simply symptoms of

(1) *Divorzi e separazioni di conjugi.* We will also find interesting statistics in M. Morselli: *Per la polemica sul divorzio;* Jacques Bertillon: *Annales de Démographie internationale.*

Country	Period of Years	Suicides in 100,000 inhabitants			
		Single	Married	Widowed	Divorced
Baden	1895 to 1899	28.1	25.7	51.3	64.1
Belgium	1896 to 1900	17.4	18.2	32.2	135.6
Denmark	1891 to 1895	30.0	36.6	77.2	259.2
Prussia	1895 to 1899	26.5	28.8	51.8	103.2
Saxony	1896 to 1900	39.5	39.1	80.6	131.9
Switzerland	1876 to 1885	29.0	30.1	53.8	157.2
Wurtemberg	1894 to 1898	23.9	24.1	37.7	82.0

the same malady, and are recruited in the same centres. This is the explanation adopted by Mr. Jacques Bertillon.[1]

Others, on the contrary, Mr. Durkheim,[2] and Mr. Fonsegrive,[3] while admitting that divorce, like suicide, criminality and folly, come from a certain moral derangement and find a choice centre among the unbalanced, maintain, however, that it is, in turn, the cause of other derangements and that it should in consequence be held as a means partially responsible for these different social sores. "The laws of divorce", says Mr. Fonsegrive, "commence by being a product and end by being a factor of disunion, of discord, of hatred and death."[4]

It would seem really as if these latter were right. Take for example suicide.

(1) Work quoted.
(2) *Le Suicide.*
(3) Work quoted, p. 205 to 220.
(4) Work quoted, p 219.

All those who have studied the question affirm that the best means to wipe it out is to reconstruct for man a solid and enduring centre to surround him with an atmosphere of security and of peace. Strong ethnical traditions, religious convictions, indissoluble marriage, these are according to them the most favourable conditions for the preservation of human life. Divorce, on the contrary, by the separations it causes, by the enmities, it creates, by the sorrows and troubles, it occasions, by the anxieties, the desires it engenders, creates a unique atmosphere for the development of suicide.

It has come to be an established fact that suicides are proportionally greater among divorced persons than among couples only separated. "According to calculations made in Saxony, during the period 1847–1856, a million of the divorced gave an average yearly of four

hundred suicides and a million of those only separated one hundred and seventy-six."[1]

It seems therefore that divorce, so long as it will not have entered completely into the morals, so long as it has not become a perfectly natural thing, will remain a cause of social unrest, of which the symptoms will be suicide and mental derangement. And the day it centres into the moral code, it will bring with it the ruin of the family and that, under short notice, of society at large.

Conclusion : "There is" said he, "a certain tendency to exalt the unessential in dealing with our public questions, and public men especially are apt to get their attention concentrated on questions that have an importance, but a wholly ephemeral importance, compared with the questions that go straight to the

(1) Cf.: Durkheim, work quoted, Liv. II, chap. 5.

root of things. Questions like the tariff and the currency are of literally no consequence whatsoever compared with the vital question of having the unit of our social life, the home, preserved. If the average husband and wife fulfil their duties towards one another and towards their children as Christianity teaches them, then we may rest absolutely assured that the other problems will solve themselves. But if we have solved every other problem in the wisest possible way, it shall profit us nothing if we have lost our own national soul, and we will have lost it if we do not have the question of the relations of the family put upon the proper basis."

And if what he says is true of every country, it is more so of ours. In our country, just in formation, more than any where else, we need order, peace and virtue, respect for all its sacred institu-

tions, which become the strength of the peoples. Laws like that of divorce indicate in the morals a degree of decadence in principles, a degree of flexibility, which are not as yet ours in Canada.

If we wish to take example by the old countries of Europe, let us copy that which has been heretofore their strength, their health, and not what is with them a sign of decrepitude and an avowal of decomposition. We must not begin by what threatens to be their termination. It is not upon the disunion of the family and by contempt of marriage that they were built up and that they prepared their greatness; no more on that basis should we form the basis of our national community, prosperous and enduring.

CHAPTER THIRD.

DIVORCE AND THE DIVINE POSITIVE LAW.

SUMMARY:—Natural law becoming obscure at the coming of Christ, necessity of a positive law.—**1° Indissolubility according to the Gospel and Tradition.**—Discussion of the Texts of St. Matthew. —Divorce among Catholics, with the Greeks, and with the Protestants.—**2° Derogation from the Law of Indissolubility.**—Dissolution of marriage contracted but not consummated.—The case of the Apostle.—**3° The Church and Civil Divorce.**—Divorce is not a thing intrinsically bad.—In what Cases in which the married couple can ask for divorce and the judges grant it.—**Conclusion.**

In the mind of God, who instituted it, marriage was to be indissoluble. But according as humanity receded from its cradle, we see this Divine intention more and more misunderstood. Polygamy and divorce attack in turn and sometimes together the institution of the family, so

that the woman becomes, more or less everywhere, only the slave of man's desires. To re-establish marriage in its primitive holiness, restore woman to her proper place in the home, was to be the work of Christ.

1°. Indissolubility according to the Gospel and Tradition.

At the time when the Gospel opens there were already a good number of centuries in which divorce had been tolerated among the Jews. To counteract the abuses that the sojourn in Egypt had introduced among his people, Moses, in the name of the Eternal, had established rules for divorce.[1] "If a man", we read in Deuteronomy,[2] "having taken

(1) It is generally agreed to interpret this passage as a regulation or limitation of a custom already existing rather than an actual dispensation.

(2) Deuteronomy, XXIV, I.

a wife, lives with her, and should she come to not find favour in his eyes because of something shameful, he will write a bill of divorce, put it into her hand and return her to her house". This "something shameful" was a term pretty vague, which in the time of Our Lord was interpreted in two different ways. The school of the Shammai would restrict it to adultery, whereas that of Hillel would extend it to a number of motives more or less trifling.

The Pharisees wishing, one day, to know the opinion of Jesus, put this question to Him: "Is a man permitted to repudiate his wife for a motive of any sort?"(1) The answer of Jesus as it is given us by St. Luke(2) and St. Mark(3) leaves no room for doubt: "He who repudiates his wife", said He, "and who

(1) St. Mathew XIX, 3.
(2) XVI, 18.
(3) X, 12.

marries another, commits adultery, and if a woman leave her husband and marries another she commits adultery". The same doctrine is found in the writings of the Apostle Saint Paul.[1] It is that which tradition has transmitted to us as containing the real idea of the Divine Master.

Two texts of St. Matthew[2] comprise a little different lesson. As it is on this variation that the Greek Church and the Protestants lay stress, in authorizing divorce, we will dwell on them a little longer and try to get their precise meaning.

According to St. Mark and St. Luke, Our Lord would have said: "He who puts away his wife and marries another commits adultery". St. Matthew, on the other hand, makes Him say: "He who

(1) Rom. VII, 2, 1 Cor. VII, 10.
(2) V, 12; XIX, 9.

puts away his wife, unless it be for infidelity, and marries another, commits adultery". The introduction "if it be not for infidelity", obscures the meaning. Does the exception regard the right to take another wife, or the fact of the repudiation? The answer is not the same in the different Christian Churches.

As this insertion does not appear in similar passages of other synoptics, many regard it as interpolated. This is particularly the opinion of Loisy[1] and of several protestant exegists.[2] "However" as it is justly pointed out by Mr. Villien[3] "this theory of interpolation has not obtained complete assent enough to enable us to rely upon it without hesitation."

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(1) *Les Evangiles synoptiques*, I, p. 579.

(2) Cf: Chs. Gore: *The question of divorce*, p. 23.

(3) *Le divorce: Dictionnaire de Théloogie de Vacant;* col. 1461.

It does not appear necessary, moreover, to have recourse to this expedient in order to bring the teaching of St. Matthew into accord with other synoptics. It suffices, we believe, to re-place the passages in question in their context, and afterwards interpret them literally. This is what we will do for each one separately.

The first[1] forms part of the Sermon on the Mount. Jesus had just addressed the following words to His disciples: "If your justice is not greater than that of the Scribes and the Pharisees, you will not enter into the Kingdom of Heaven". And to bring into the light the superiority of the ideal He brought into the world, He draws a parallel between the prescriptions of the old law and those of the new dispensation: "You have learned that it was said to the ancients: Thou shalt not kill; but I say to you whosoever

(1) V, 20–32.

is angry with his brother deserves chastisement. . . You have been told that it was said: Thou shalt not commit adultery; but I say to you, whosoever looks upon a woman to covet her has already committed adultery with her in his heart". Pursuing this opposition, He adds: "It was said that whosoever puts away his wife gives her a bill of divorce; but I say to you, if it be not for infidelity, exposes her to become guilty of adultery, and that he who marries a woman who has been put away commits adultery."

The idea of Jesus here is sufficiently clear. He interdicts to His apostles the repudiation which Moses had permitted. He tolerates it only in the case of infidelity. Moreover, the repudiation which He allows is not divorce, but a simple separation of bed and board. The conjugal knot is not untied, it remains with all its rights. This is at least what

appears to us to be the outcome of the last part of the verse, wherein Jesus calls adultery the marriage of the woman repudiated. If she cannot remarry, it is therefore because she still belongs to her first husband, and that her marriage with him subsists. Thus, it is called for, moreover by the opposition that Jesus emphasizes between the prescriptions of the old and the new laws. If Jesus permitted the divorce in the case of infidelity, He would place himself in the rank of the Shammai and the words "but I say to you" would have no further meaning.

The second passage is a little more difficult to interpret. The Pharisees came to Jesus and asked him if it was lawful for a man to put away his wife for any reason whatsoever. This was inviting Him to choose between the school of the Shammai and that of Hillel. Jesus rising above the discussions, recalls to the Pharisees

that in God's intention the institution of marriage should be indissoluble and He concludes thus: "Let no man put asunder what God has joined together". The Pharisees come back to the charge and bring up in contradiction the permission granted by Moses. "By reason of the hardness of your hearts," replied Jesus, "that Moses had permitted the repudiation of your wives, but in the beginning it was not thus. And I say to you that whosoever repudiates his wife, if it be not for infidelity, and marries another, commits adultery, and he who marries a woman who has been put away commits adultery."

The question is therefore to know if the exception, contained in the inserted sentence "if it be not for infidelity" bears upon the law of taking another woman as well as upon the fact of the repudiation. The text might, strictly

speaking, have the two interpretations. But the context seems rather to favour the more severe interpretation. In all this passage, Jesus seems to wish to bring back marriage to its primitive holiness, and to withdraw the permission granted for a time by Moses, because of the roughness of their morals. It would not then be by chance, but quite intentionally, that the insertion in question would be placed after the first part of the phrase rather than after the second. This interpretation—we cause to be remarked with regard to the preceding passage—is the only one which could harmonize with the affirmation contained in the latter part of the verse, as it is also the only one which permits ûs to reconcile the teaching of St. Matthew with that of St. Luke, of St. Mark and of St. Paul. It is truly, moreover, what the disciples of Jesus seem to have understood, since

they could not help exclaiming: "If this is the condition of man in regard to woman, it would be better not to marry".

The doctrine of Jesus is therefore everywhere the same. The marriage He imposes upon His followers, is the primitive marriage, one and indissoluble.

* * *

The tradition of the first centuries is a guarantee of the precision of the interpretation. All the Fathers knew these passages, many of them quoted them, and nevertheless, "until the fourth century," affirms Mr. Souarn[1] "we have never met with any one of them who voiced the sentiment that the woman, and with greater reason the husband, could remarry when their conjugal partner had fallen into adultery". Edg. Loning who cannot be suspected of partiality in our

(1) *Dictionnaire de Théologie Vacant;* Vol. I, col. 475.

favour, gives the same testimony: "We do not find in the three first centuries any proof that the Church believed, in conformity with Holy Scripture, of remarriage of couples who had separated during the life of the other party."[1]

However, from the fourth century, a certain hesitation begins to make itself felt. The cause is found in the legislation of the Roman Empire which was in complete opposition, on this point, with the precepts of the Gospel. Henceforth two currents were outlined: the Latin current favorable to indissolubility, and which came to a head, after several centuries of uniform and universal discipline[2] in the definition of the Council of Trent,[3] and the Greek current which is

(1) Cf. A. Villien: *Le Divorce. Dictionnaire de Théologie de Vacant*, col. 1462.

(2) Cf. A. Vacant: *Adultery and the marriage tie in the Latin Church: Dictionnaire de Théologie de Vacant.*

(3) Cf. A. Vacant: *Adultery and the marriage tie in Council of Trent, Dict. de Théloogie de Vacant.*

based upon a false interpretation of St. Matthew, perpetuating up to our day the tolerations which Origen had already noted in some of the Bishops of his time.(1)

Protestants, having choice of one or other of these interpretations, adopted evidently the second. Divorce was introduced after them into Germany, Holland, Denmark, Sweden and Norway. England hesitated longer. It was only in 1857 that the parliament established divorce courts. And it did so at the instance of Mr. Charles Gore, in violation of the law of the established Church, "The law of the Church of England," they affirm, "is and remains the old law which affirms the indissolubility of marriage".(2) It is in the same spirit that the Anglicans of Canada met in a general synod in Montreal, protested on two occasions,

(1) Cf. J. Pariseau: *Adultery cause of divorce in oriental churches, Dict. de Théologie de Vacant.*

(2) Charles Gore, volume quoted, p. 10.

in 1905, and in 1918, against all attempts to facilitate divorce and remarriage.

Our Protestant representatives in parliament who seem to rank divorce among the dogma of the Reformation are therefore in opposition, as Christians, to the law of Christ, and, as Anglicans, to the primitive laws of the Church of England.

2°. Derogations from the Law of Indissolubility.

We have previously demonstrated that restricted dissolution, especially of the conjugal tie, is only in opposition to secondary precepts of the natural law, and all theologians agree in saying that God can dispense us from them, even by means of a general measure, let it be directly, or by the intermediation of His Church.

In fact, the Church has, from time immemorial, exercised this power, not in

her own name, but in the name of Christ and with His divine assistance. The derogations from the law of indissolubility that she has thus sanctioned by her authority are of two sorts: the one has for its object the marriages contracted but not yet consummated, the other has to do with marriage of infidels. These derogations have a status that we will endeavour to elucidate.

Here is first of all whence comes, from the point of view of indissolubility, the difference that the Church sees between a marriage which has been consummated and one that has not been. "In Roman law," says Mr. A. Villien, "at the time when Christianity was making its first conquests, marriage was a family contract, which was not subject either in the preamble or in the Act itself, to any legal publicity. The Church, no doubt, counselled very emphatically, from the

beginning, the faithful not to remarry without asking the sacerdotal benediction on their union, but as she did not make it a strictly judicial obligation, that the consent of the couple be given in her presence, it came to pass often that unions were contracted without her having been called upon to bless them, without her being officially notified."[1] Not being able, in many cases, without great difficulty, to prove the consent, hence she came to attach primordial importance to cohabitation and even to look upon the marriage as finally existant only when it has been consummated.

Upon this judicial reason was grafted another one in the theological order. There was a pretence, founded upon Holy Scripture, that it was only at the moment

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(1) *Dictionnaire d'Apologétique de D'Alès.* Article already quoted.

wherein the man and wife became one flesh that they fully realized the symbolic union of Christ with his Church, that it was at that moment, consequently, that the sacrament was fully constituted.

These theories gave rise to a famous controversy between the school of Bollondists and that of Paris, the doctors of Bologne sustaining against those of Paris that the non-consummated marriage was only an incomplete initial marriage. Alexandre III. who, at the time he was called Master Roland, had shared the opinion of the school of Bologne adopted, when he became Pope, a middle course. He taught that the marriage not yet consummated was a real marriage, but, from the point of view of dissolution, it was under the jurisdiction of the Church.. This is the opinion which has prevailed since.

From the authority coming to her from

Jesus Christ, the Church can dissolve marriages which have not yet been consummated. She does so for reasons of which she alone remains the judge. Much further, she has established a general cause of dissolution, when she has decreed that solemn vows annul all marriages that have not yet been consummated. She recognizes in herself therefore a real power over the conjugal tie, until the consummation has intervened making it absolutely indissoluble.

* * *

The second case of derogation that we have mentioned is that which is known by the name of "Case of the Apostle," or "Pauline privilege." This is in what it consists: "in the case of a marriage legitimately contracted among infidels and consummated, if one of the couple

should embrace Christianity, and that the other being obdurate in error, refuses to cohabit with him, or does not wish to continue unless by offending God, then the one who has become Christian will be at liberty to contract another marriage, provided that the infidel, duly questioned, absolutely rejects the cohabitation, or else admits it but lets it be seen that he intends offending the Creator".[1]

The Church holds this privilege from the Apostle St. Paul[2] and she exercises it in the mission countries for the benefit of the faith of the Christians. However, she has always used this power—as well as the preceding one—with such wisdom and discretion that no one ever thought of reproaching her with it.

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(1) Cf. De Smet, work quoted, p. 275.
(2) I Cor. VII, 8–15.

3°. The Church and Civil Divorce.

These derogations from the law of indissolubility which we have just mentioned are not divorce. Divorce comprises, moreover, the dissolution of marriage which has been lawfully contracted between the faithful and which has been consummated. Now, the Church has never assumed such a power. Christ might have left it to her. We have seen above that He did not do so. Divorce will forever remain a thing which the Church could never admit nor tolerate.

It has been said that she often granted it readily, for pay, to the rich and powerful. This is a mistake. Divorce has been confounded with a simple declaration of nullity. There are marriages which are null, just as certain contracts are null. The Church reserves to herself the right to decide this officially. But, each time

that she has recognized the fact that the tie really existed, she has always refrained from breaking it.

The Church—if we understand by that, not this bishop or that church in particular, but the supreme authority constituted by Jesus Christ—has never permitted divorce properly so called. Sooner than permit it, she has, on several occasions, preferred to suffer annoyance from the civil power, persecution and even schism.[1]

* * *

As to civil divorce in Christian countries through Reform or Revolution, she has already regarded it as a violation of both natural and Divine law, and as a sacrilegious attack upon her rights. She imposes upon her children the duty of

(1) J. de la Servière: *Divorces among Princes, Dict. d'Apologétique de D'Alès.*

combating it by every means in their power. A Senator, a Member of Parliament, a Minister above all, who would not use all his influence to prevent the introduction of divorce into this country, would be seriously responsible to the country and before God. This is one case when we can say that quiesence is truly criminal.

But once a country has accepted the establishment of divorce, what course is then open to Catholics with regard to it? Can judges pronounce upon it? In exceptional cases, that are very rare and for serious reasons, can married people have recourse to it? These are so many questions upon which theologians and canonists are far from agreeing.

All recognize evidently that divorce is an evil. It is so by the power it aggregates to itself over Christian marriage. It is so above all by the grave consequences

which it entails upon civil life. Upon this point there is no hesitation possible. Moreover, it is admitted universally that divorce pronounced by the State does not affect the matrimonial tie. It is but the dissolution of the civil contract. Catholics thus divorced can never remarry.

But, wherein opinions differ, is when the question arises as to whether civil divorce is such a very bad thing, that no reason whatever can authorize the judge to pronounce upon it, or wedded people to have recourse to it. Some pretend so,[1] but in practice, it is the less strict opinion which has prevailed.[2] It is moreover well patronized by excellent theologians; it

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(1) Cf. De Smet: Work quoted, P. 322.

(2) Gasparri, more favourable however to the other opinion, he avows frankly, and adds: "For this reason we cannot approve those who make newspaper warfare upon this opinion treating it as illicit." Cf. A. Villien: *Le divorce, Dict. de Théologie de Vacant*, col. 1477.

was taught in the reviews and the dictionaries,[1] so that it is lawful for all Catholics to follow it, so long as no contrary direction has come from Rome.

Up to this the Holy See has refrained from giving any decision on this subject. Questioned on several occasions, on concrete cases, sentences were pronounced, sometimes severe ones, at other times mitigated. What is required, above all, is to prevent divorce from penetrating into our Catholic society. Its decisions vary somewhat according to the country. It is more tolerant when divorce has already become embodied in their moral code. It is less so in countries wherein divorce has been recently introduced, and its use limited.

To come to the practical application, the Church tolerates first that the couple have recourse to divorce, when they are

(1) Cf. de Smet: Work quoted, p. 322.

married only civilly, or else, when married before the Church, have obtained the breaking of a tie which in fact has never existed, but only to abrogate the civil effects of this pretended marriage. Moreover, when the civil law does not admit of separation of bed and board, the couple validly married this time, can, after having obtained from their Bishops a declaration permitting the separation, have recourse to divorce to legitimatize it before the civil tribunal. A good many others permit recourse to divorce when it is the only means to insure Christian education for the children, or again, to avoid the danger of intrusion of adulterous children.[1] However, when the separation of bed and board suffices to ensure the same advantages guaranteed by the law of divorce—and this is the

(1) Cf. De Smet, work quoted, p. 326.

case in Canada—it is not then permitted to have recourse to this latter.

Whenever the married couple have a right to enter an action for divorce, it is clear the lawyers have the right to defend it. But apart from this hypothesis, all suits for divorce are forbidden them. Mere material interest or profit will not suffice to legitimate them. "If however the circumstances are such as to prevent him from declining to act and that his professional duty imposes one of these suits at law, he can accept, after having vainly tried to keep out of it; but then let him confine himself to simply exposing before the tribunal the legal motives upon which rest the demand for divorce, and stating that divorce is opposed to Catholic principles".(1)

It is the same with the judge. He

(1) Cf. De Smet, work quoted, p. 327.

should pronounce the decree of divorce only when all means that come within his power to avoid this sentence have been exhausted. He should try to reconcile the parties or at least to induce them to ask for only separation of bed and board. He should have recourse to delay, and to adjournments such as the law permits. But when all efforts have failed; when to differ longer or decline to act becomes for him impossible; when he sees himself called upon to leave his position, then it might be permitted to sanction a divorce, on condition of interpreting the law as narrowly as possible.

It is to be hoped, however, that our Catholic judges will never be placed under the painful obligation of applying a law that their consciences disapprove.

Conclusion : It is, for the most part, to this Christian conception of marriage, which we have just explained, that the civilization of to-day owes its superiority over all civilizations that have preceded it. It is this, which by insuring unity and cohesion in the family, has furnished the social order with a fixed starting point. It is this which has raised woman from a state of slavery to one of companion of man and queen of the home. It is this which makes the child, heretofore the property of his parents or the city, a something belonging to God and the corner stone of the entire family edifice. Every attack made upon the family, such as Christ had wished it, is at the same time an attack upon modern civilization. Instead of being a progress it is a receding. "Every time we advance in the direction of the Gospel", said Mr. Fonsegrive, "we tend

towards justice, and a better civilization; every time we wander from the paths it has traced out, when under pretext of progress we invert the ends it has assigned, we help a backsliding in morals and in true civilization."(1) The establishment of divorce in Christian countries is about to furnish us with further proof.

(1) Volume quoted, p. 88

PART SECOND.

THE JURIDICAL ASPECT.

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CHAPTER FIRST.

DIVORCE AND THE RIGHTS OF THE CHURCH.

SUMMARY:—The wherefore and meaning of the present chapter.—The question is not of infidel marriage but of Christian marriage.—Christian marriage is a sacrament.—Rights of the Church and the State respectively on marriage.—Divorce is a violation of the rights of the Church.—Divorce is an attack upon the free exercise of Catholic worship guaranteed by the Act of Quebec.—Opposition of Anglicans to the law of divorce.—Divorce is an element of religious discord.—Conclusion.

In order to well understand the wherefore and meaning of this present chapter, we must remember that Canada is no

more a Protestant country than a Catholic one. It is a country wherein are Protestants and Catholics having absolutely the same rights and the same liberties.

If Catholics have to reckon with the religious opinions of their separated brethren, there should be mutual respect.

To be more precise: we never pretended that Protestants had to bow to the rights of the Church. What we do pretend is that they have no right to ignore them. This, however, is what they have done last year.

In reading over the debates on the Bill introduced by Mr. Nickle into Parliament we are painfully surprised to see that the partisans of divorce did not even take the trouble to justify their trespass upon the rights of the Church.

They did not seem to remember that in legislating upon marriages they were

laying sacrilegious hands upon something religious and violating one of the most sacred laws of the Roman Church.

We cannot however suppose, that after the passionate discussions which arose of old about the decree "Ne Temere," Protestants ignore that for two millions and a half of Catholics,—that is to say, for more than one third of the total population of Canada,—Christian marriage remains, in the twentieth century as in the middle ages, a sacrament; a thing, consequently, which the Church does not permit the State to touch. Therefore how explain the defiance with which the defenders of divorce have put aside the Catholic pretentions?

No doubt, Mr. Nickle said, in presenting his Bill, that he had no intention whatsoever of wounding our religious convictions and that he intended for that

reason to remain upon strictly legal ground.

But he was wrong in ignoring that in matters like marriage, the legal point of view and the religious point of view are inseparable. He should have known that in such matters, Catholics recognize, beside and even above the legal rights of the State, also the legal rights of the Church.

These are affirmations which form part of what we call our religious convictions, convictions which all laws in favour of divorce, whether Mr. Nickle wishes or not, could not but wound profoundly.

It has appeared to us opportune to here resume briefly, the teaching of Catholic theology, touching the respective rights of Church and State upon Christian marriage. This teaching, our Catholic Members are obliged to respect and defend in Parliament as everywhere

else. As to Protestant Members, we will show them that they also must take this into account, firstly in the interest of religious peace and then in justice to the Catholic element.

* * *

All that we will say of marriage, in the present chapter, should be understood to be with regard to Christian Marriage. The Church never assumed legislative power over those who are not baptized.

The marriage of these latter springs, as an element of social good, from the civil power. To their power, therefore, belongs the right to determine the formalities which should surround the contract and the conditions which should insure its validity.

However, the State must remember that marriage, not being a civil institution but a natural one, it cannot make laws affecting the nature or the essential character of marriage. All that has been determined by the Author of nature itself, and no authority here-below can change it. Indissolubility—we have shown in a preceding chapter—is a thing which flows from the very nature of marriage itself. Every law which attacks the indissolubility of marriage violates therefore the natural law and is, by the same stroke, nullified. We will see that it is doubly so, when not an infidel marriage, but a Christian marriage, is attacked.

* * *

Christian marriage has been, in fact, by the will of Christ, elevated to the dignity of a sacrament. This is the

teaching of the Council of Trent,[1] solidly established on the doctrine of St. Paul[2] and confirmed by a continuous ecclesiastical tradition. It is therefore a thing essentially supernatural and, like all things supernatural, it is from the Church and the Church alone it springs.—The State cannot, without trespassing upon the rights of the Church, makes laws which attack marriage in so far as it is a sacrament. It will be objected, perhaps, that if marriage is a sacrament, it is also a contract, and that as such, it belongs to the political order, and should be submitted to the laws of a secular power. —This distinction between the contract and the sacrament invented by the Gallicans in order to remove marriage from the authority of the Church, has been reproved, on many occasions and

(1) Sess. XXIV, Can. 1.

(2) Eph. v. 26–32.

in particuliar, by Pius IX, in his letter of 19 Sept., 1852, to the King of Sardinia. "It is a dogma of faith," wrote the Pontiff, "that marriage has been raised by Our Lord Jesus Christ to the dignity of a sacrament; so that the sacrament is not an accidental quality subjoined to the contract, but that it is of the very essence of marriage". There can therefore be no question for a Catholic of separating the contract from the sacrament. There is no contract to which a sacrament is added; there is a contract which has itself been raised to the dignity of a sacrament. Contract and sacrament constitute a unique whole in the religious order and the State cannot touch the one without laying a sacrilegious hand on the other.

Let the State therefore give over to the Church all that relates to the intrinsic value of the conjugal tie. To her belongs the regulation of all formalities in the

celebration of marriage; hers, to establish the different impediments, which go to insure its morality; hers, to take information about matrimonial cases, and to pronounce as sovereign judge upon the validity or nullity of the tie. All these things and many more, although they be not indifferent even to the civil interests of natural society, come so close to the sacrament, and are so intimately related to it, that the Church will always look upon the intervention of the State, in these matters, as an attack upon the rights which she holds from her Divine Founder. On the other hand, never has she advanced pretentions to what belongs properly to the State; to wit: All that regards the intrinsic relations of the contract with civil society. Whether the State exacts joint notifications and registrations of the marriages taken place; or that it have the power to sanction the

contract and insure its being effective before the civil tribunal; or that it regulate all that regards the successions of matrimonial goods, it is within its rights. But "if it oversteps these limits, it violates a territory not belonging to it, and thus provokes between Church and State, dissensions and conflicts which pain and trouble the religious consciences of the peoples."(1)

* * *

It becomes evident from what we have just said, that all laws upon divorce are a flagrant violation of the rights of the Church. Or else, in fact, of wedded Christians—whatever else may be their religious confession—they were either married by the rules laid down by the Church,

(1) *Letters of the Episcopate of Ombria 1860. Pastoral works of Cardinal Pecci.* T. II, P. II.

or else they took no account of them. If they took no notice of them, not only their marriage is not a sacrament but there is no marriage at all.[1] The only effect of divorce in this case, would be to annul the civil effects of this union.

If on the contrary, they have been married according to the rules established by the Church, then their marriage is a veritable sacrament, and the State should not touch them any more than any other sacrament instituted by Jesus Christ, and of which the Church has been given the guardianship. Let it not be said that the State aims only at the contract without reference to the sacrament. We have demonstrated above that it

(1) "Between the faithful there can be no marriage that is not at the same time a sacrament, and for this reason, all union between man and wife among Christians, that takes place outside of the sacrament, even with the sanction of whatever civil law, is nothing else but shameful and fatal concubinage."

Pius IX; *Consistorial lecture* of 27 Sept., 1852.

cannot do so. There is no kind of contract to which is added a sacrament, but there is one contract which has been elevated to the dignity of a sacrament, by our Lord Jesus; and to touch the contract is necessarily to touch the sacrament.

All State interference with the marriage tie will therefore always be regarded by Catholics as sacreligious.

It would be, moreover, for them, an undertaking which would be rendered impotent beforehand. The State could very well destroy the civil effects of marriage, but it could not break the tie itself. This is beyond its power.

Divorced before the law the conjugal partners would remain married before God.

Let the State be under no illusion; for a law of this kind would never be one to us, and all the divorce sentences it could

pronounce would always remain, in our eyes, as null and invalid.

Not one Protestant member, it is true, admits the teaching I have just put forward, and our intention is not to impose it upon them.

All that we ask of them is to remember that this doctrine is sacred to us and ask them to respect it. And this we ask in the name of a broad and enlightened policy.

They should not forget, in fact, that for more than two millions and a half of their compatriots, a law like that presented at the last session is a sacreligious attack on the rights of their Church and an attack upon their most sacred convictions.

The Canadian Constitution might permit the violation of their rights and the wounding of these convictions, but that is not the question.

The question is to know if, in a country where a Catholic minority is called upon to live in the midst of a Protestant majority, the latter should take into account the religious convictions of the former. And it seems to me that the question thus put, there can be no doubt as to the answer.[1]

There is more, however. We pretend that a law like the one which was being imposed upon us last year would come to be an obstacle, at least so far as there was question of Catholic marriages, to the free exercise of our worship such as it

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(1) Mr. Rodolph Lemieux had already given, in 1910, the same notice to the House; "By many people, possibly by the majority in this house, marriage is considered as only a civil contract, but to many others certainly to a respectable minority in this country embracing all races and all creeds, marriage is more than a civil contract; It is also a sacrament:—Therefore Parliament should be careful about opening the gates to any legislation affecting the very foundations of Christian society".

Debates in the House of Commons, 14 February, 1916.

had been guaranteed by the Act of Quebec.

Here, we wish to be well understood. We put aside the strictly constitutional point of view, which is beyond our province. We do not ask ourselves if the Federal Parliament has the power to modify article 185 of the Civil Code of Quebec and put divorce into it.

All that we ask is this: By article 5 of the Quebec Act of 1774, England had granted to the Catholics of Lower Canada the free exercise of their religion. This liberty comprises for the Church the right to make marriage laws and for the State the duty to have them respected. In accord with the old French laws, in force in Quebec, the Church has declared the marriages of her children absolutely indissoluble. When, then the State, on its own authority, comes to modify this law and separate two of the faithful, it

is manifest that it puts restraint upon Catholic worship and attacks its liberty.

Once more it may be that a law of this kind be constitutional. But, it will not suffice that a measure be constitutional that we should have a right to pass it. And we will never admit that any one could have the right to put obstacles in the way of the free exercise of worship of a third of the population of Canada.

No doubt, for more than one Protestant, the question of divorce is in no way a part of the religious question, and the State may attribute to itself a real authority over the marriage tie, without usurping any right nor violating any liberty.

However, when the question arises of the free exercise of our worship, it is not from their standpoint, but rather from ours that they should look. And, from that point of view the Church is the only

authority which has the right to make laws affecting the conjugal tie. To take from or restrict that right, is therefore to attack her liberty.

* * *

We have spoken, up to this, only of the opposition of the Catholic Church to the introduction of divorce amongst us. But it must not be believed that she is the only one to protest. In 1918, the Anglicans met in general Synod at Montreal, solemnly affirmed "Their belief in the indissolubility of most holy marriage and their determination to resist every attempt at facilitating divorce and remarriage." Already in 1905, in another Synod, held also at Montreal, they had forbidden all ministers of their worship, to celebrate the marriage of a divorced person during the lifetime of the conjugal partner.

Our Members can, no doubt, get over these protestations, but would it be wise? Would it even be just? The English Parliament in spite of its recognition of the supremacy of Temporal Power in mixed matters, marriage remains none the less for Protestants as for us a religious and a civil affair at the same time. Therefore, would it be just, in a question of this kind, that Parliament should pay no attention to the openly manifested opinions of two of the principal churches of Canada? If these churches have no legal right to interfere to prevent Parliament from touching the indissolubility of marriage, it would appear to us that they had a moral right to be heard.

* * *

We will ask, in the last place, the Federal Parliament to avoid all conflict with the authority of the Church in this

special matter of divorce, because of the trouble that such conflicts would create by engendering doubt in the consciences.

Never, as we have said above, will the Church recognize the right of the State to separate those whom she has joined. Unmarried in the eyes of civil society, they will remain married before God and also in their conscience, if they be Catholics. When, in a moment of passion or the momentary clouding of their faith, these divorced people remarry, they will for the rest of their lives be in trouble between God and their conscience.

Such is the case analysed by Mr. Paul Bourget in his celebrated romance "Un Divorce" and which drew from the author the malediction which he puts into the mouth of his heroine.

"Against that criminal law under which, through temptation or weakness woman had succumbed, a law fatal to the

life of home and religion, law of anarchy and of disorder, which had promised her liberty and happiness, wherein she found like many others, only servitude and misery!"

The case I have just cited is not unique. There are others. There is in particular that of the lawyers and the judges obliged by the duties of their state, to interpret a law which their conscience cannot approve.

There is that of the children of divorcees and re-married people, legitimate before the State and illegitimate before the Church. All these are troubles, the more painful of all because they are produced in the conscience. Has the State an interest in introducing them into our country? Has it an interest in throwing, as a bone of contention between these two races, this new element of discord?

Why confront the Church to which belongs a large portion of the population with a law which was imposed upon her, against her will, by others?

It will be said, perhaps: let the Church give in and there will be no further conflict. The Church cannot yield. For her it is not a question of opportunity, it is a question of principle, and she is not free to give up a principle. On the other hand, no one will maintain that it is the same with the State. On several occasions Bills relating to divorce were rejected by Parliament. And if the Nickle Bill could obtain a majority in the House of Commons, it is not certain to do so before the country. There is therefore no necessity for the Federal Parliament to create this disturbance between conscience and law, the Church and State, between the the Catholic and the Protestant elements.

Moreover, in all these mixed questions which interest both religion and politics, the State always has the greatest interest in coming to an understanding with the Church. Ecclesiastical law, particularly on marriage, is at once the work of God and that of time.

It is in its main lines, contemporary with those far away days when the family was strong and united. It remains, therefore, in these troubled times, wherein the foundations of society are worn and disintegrated, the best guarantee of stability.

No doubt, laws such as these should show progress in all their details. The last edition of the code of canonical law shows that the Church has understood this and taken it into consideration. "The Church," Leo XIII wrote, "is always ready to show herself accommodating in all that is compatible with her rights and

her duties. Also, in her laws on marriage, she has always taken into account the State and the condition of peoples, not hesitating when there was need for it, to modify her own laws". This conciliating attitude of the Church renders absolutely unjustifiable the unrest which the State is about to create, in enacting, in contempt of the laws of the Church, a law whose utility is more than doubtful, despite principles that have been approved by the whole civilization of Christendom.

Conclusion: — We all know that our Senators and our Catholic Members of Parliament, generally take no part in the discussion nor vote on private bills of divorce. Heretofore under the Union it was otherwise and we believe it was better. Thus the second July, 1864, with regard to the Benning Divorce Bill, the Prime Minister, Sir Etienne Pascal Taché

rose and said: "I oppose the second reading of this Bill and I do so on the principle that divorce is anti-Christian and anti-national. I would be sorry to wound the feelings of others whosoever they might be, but we must protect society and we have certain duties to perform. For my own part I would fail to satisfy my conscience, my religion and my country, were I to not oppose this Bill." The Bill was carried by 61 votes against 42, but an affirmation of principle such as this was equal to a vote.

We have no intention however to impugn the silence of our Senators and Members. A silence of this kind which, when last year the question arose of the introduction of a Divorce Bill by Mr. Nickle, would have been a grave error and a great fault, can be easily understood when there was only question of a private Bill of Divorce.

And we only emphasize it here in order to point out the two attitudes.

If our Members and our Senators abstained from voting, when they could excuse their vote behind the social interest of our country, it is through respect for the opinions of Protestants that they do so. Then, might we expect that these same Protestants would come to violate the right of our Church and attack the liberty of our religion? Might we not expect that they would profit by the majority which their greater number would give them, to come and modify the ecclesiastical laws on one of the most sacred points of our faith, and install in the heart of Quebec, a divorce court which would be in perpetual defiance of our dearest convictions? No, truly, we did not expect it!

CHAPTER SECOND,

DIVORCE IN CANADA.

SUMMARY:—History of divorce in Canada.—Criticism of the present procedure.—The consequences of the establishment of divorce in Canada.—The reasons brought forward: first the solicitude for the poor.—Overcrowding of the committee on divorce.—We should not change the actual procedure but suppress it. Conclusion.

The different Parliaments which have preceded this one, that of 1774, of 1791 and of 1848, have each assumed the right to grant divorce. This right was by the British North America Act taken away from the Provinces and entrusted to the Federal Parliament. Section 91, in enumerating the attributes of the central legislature, says, in paragraph 26, that its legislative power extends to "marriage and divorce". The celebration alone

of marriage is, by paragraph 12 of section 92, left to the Provinces and because the words "marriage and divorce," interpreted without restrictions of any kind seem to be in contradiction to some of our constitutional guarantees, the Fathers of Confederation took care, when discussing the resolution at the conference of Quebec, to specify and settle the limits of its meaning.

This is, for instance, what the Hon. Hector Louis Langevin, Solicitor-General of Lower Canada, in the session of 21 February, 1865 affirmed. "Let us now examine the question of divorce. We do not intend either to establish or to recognize a new right, we do not mean to admit a thing to which we have constantly refused to assent. But at the conference the question arose which legislature should exercise the different powers which already exist in the constitutions of the

different Provinces. Now, among those powers which have been already and frequently exercised *de facto*, is that of divorce. As a member of the conference, without admitting or creating any new right in this behalf and while declaring, as I now do, that as Catholics we acknowledge no power of divorce, I found that we were to decide in what legislative body the authority should be lodged which we found in our constitutions. After mature consideration, we resolved to leave it to the central legislature, thinking thereby to increase the difficulties of procedure which is at present so easy.

We found this power existing in the constitutions of the different Provinces and not being able to get rid of it, we wished to banish it as far from us as possible." (Debates on Confederation, 1865, p. 389).

We do not know what may be the juridical value of a declaration such as this; but what is very evident is this,—establishing courts of divorce in Ontario and Quebec, was going against the formal will and expressed intention of those who made the federal pact. Moreover, it was understood that it was on account of their belief in such declarations that the Canadians of Lower Canada had accepted the federal pact. There is a kind of disloyalty on the part of Members from other Provinces, in coming today to give another meaning to these words,—a meaning altogether different from that which had been at that time officially admitted.

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According to the British North America Act, the power to grant divorce is therefore reserved to the Federal Parlia-

ment. This power the Parliament has always exercised to a more and more general extent. From 1867 to 1877, 7 divorces were granted; 16 from 1877 to 1887; 36 from 1887 to 1897; 53 from 1897 to 1907 and more than 200 from 1907, to 1917.

Besides this special court to which access can always be had, certain Provinces have divorce courts of their own. The oldest in existence are those of the Maritime Provinces. They have these courts at the time of coming into the Confederation, and they had maintained them. Moreover, in 1908, a judgment of the Privy Council declared that the courts of British Columbia had jurisdiction in matters of divorce. Having adopted, in fact, English law as it existed in 1870, British Columbia enjoyed the benefit of the law of 1857, establishing divorce courts in England. But this is not

all. Since then Alberta, Manitoba and Saskatchewan have adopted the same legislation as British Columbia. Many affirm that the courts of these Provinces have also jurisdiction in matters of divorce. In fact, two judgments were rendered in this sense, one in Manitoba, by the Supreme Court of Manitoba, the other in Alberta, by the Supreme Court of Alberta.[1] In any case, for Ontario and Quebec the question is not in doubt; divorce can be had in these two Provinces only by having recourse each time to the Federal Parliament.

There is a great deal of criticism, these latter years, of the procedure adopted in the latter case. In fact, it is rather complicated. "Each demand for divorce must be presented in the Senate, within the thirty days following the opening of

(1) These and other instructions can be found in the speech of Mr. Nickle in the House of Commons, 20th June, 1919.

the session, after having been published, six months before, in the *Canada Gazette*." The Senate sends this demand to a special commission composed of nine Senators which is called Committee on Divorce. The Committee elects its Chairman, examines and judges the cases submitted to it, summons witnesses, hears speeches of lawyers, etc. and the majority of votes carry the decision; five Members are required to form the quorum. The report of this Committee is afterwards discussed and voted upon by the Senate, and if the vote be favourable, this report is sent to the Commons, who debate and vote upon it in turn like another Bill.[1]

Divorce as obtained from Parliament, remains a luxury. Access to it is prohibitive for the majority, to the poor

(1) R. Father Duvic, O.M.I.: *Législation civile du Canada concernant le mariage et le divorce en regard de la législation ecclésiastique*, p. 85.

particularly, hedged in by costly formalities and discouraging difficulties.

On two occasions, in 1914 and in 1916, Mr. Northrup asked, unsuccessfully however, for the complete alteration of this procedure. In June 1919, Mr. Nickle, profiting of the sudden multiplication of the demands of divorce, occasioned by the return of our soldiers, presented a Bill in the House of Commons asking for the establishment of uniform legislation on divorce and regular courts throughout Canada. This Bill, being sustained by the great majority on both sides of the House, received without difficulty a second reading. Abandoned momentarily to give time for study, it was not taken up for reasons unknown to us, but which, probably have nothing to do with the convictions of the majority in the House.

On the 2nd of March 1920, the Nickle

Bill reappeared, but this time, in the Senate, under the patronage of Honorable Mr. Barnard. It, however, made only a short lived appearance. At the moment it was to be discussed it was suppressed and in its place the Hon. Mr. Ross, presented another from which the Province of Quebec was excluded. The new Bill passed the Senate with a large majority. It went no further. The unanimous protestation coming from Prince Edward Island especially aimed at it, and the fear of a lively opposition from the Catholic and French Members of the Commons, were the cause that the Ross Bill like the Nickle Bill was abandoned half way.

This is the present situation. The different Bills of which we have spoken are dead. But the idea which engendered them is not. Unless a strong country campaign be organized in Parliament and

in the country we will have within a few years, a few months perhaps, divorce courts in all the Provinces of Canada, even in Quebec itself. We have said in in the preceding pages, what we think of divorce. It remains for us only to add a few words on the project of establishing laws and divorce courts throughout Canada.

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But before coming to the study of this question we must dissipate an ambiguity which has insinuated itself into the minds of the best informed. When the Nickle Bill was being discussed in the Commons it was affirmed[1] and it was

(1) Here are the words of Sir Robert Borden: "It is not a question of establishing any new principle. It is purely a question as to the procedure by which and of the conditions and safeguards under which divorce shall be granted." —*Debates at the House; Lecture*, June 20th, 1919.

repeated throughout the country, that it was simply a question of change of procedure. Our Members believed him and abstained partly from voting. Outside the House minds usually very watchful of the Catholic interests seemed altogether disinterested in this discussion. They said to themselves, "since divorce exists in Canada, it is only just that it should be accessible to all and to replace our absurd and complicated procedure by the procedure in force everywhere else."

They were strangely mistaken. What Mr. Nickle wanted was not only to replace one procedure by another, it was in reality to introduce divorce into the Provinces which were as yet without it. The present Parliament possesses indeed, like the different Parliaments that have preceded it, the right to grant divorce to individuals, let them come from what Province they may. But in certain Prov-

inces, in Quebec for instance, and in Ontario, divorce does not exist. The general law is indissolubility.

What the inhabitants of Ontario and Quebec ask of the Federal Parliament, is, therefore, not to apply to them a law of divorce which does not exist, but rather to dispense them from the general law. The law they would obtain would be a law for themselves alone. But marriage, after as before this law, would remain indissoluble for all.[1]

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(1) Mr. Doherty whose competence in such matters is admitted by all, said in the House, 14th February, 1916: "An Act that grants divorce is a private Act. The parties come here asking for it, just as they come with other Private Bills when they want to get something that the general law of the country does not give them. And it is precisely because the general law of the country says: once you are married you can never marry again while your consort is alive, that when one wants to be relieved of the operation of that general law, he comes to the Parliament of Canada and asks for a law for himself; and each of these petitioners goes away, when he succeeds, carrying with him a law that is a law for him—a law that takes him out of the operation of the general law."

Also, whatever may be at the present moment the reasons brought forward by those seeking divorce, whatsoever precedents they may invoke, the Senators and Members of Parliament are always at liberty to accept or reject their petition. As it was pointed out by Mr. Nickle himself, the inhabitants of Quebec and Ontario have no legal right, but only a moral right to the dissolution of their marriage.(1)

Suppose on the contrary, there existed a law such as proposed by Mr. Nickle last session, the existing law which declares marriage indissoluble in Quebec and Ontario, becomes by that fact modified and

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(1) "It is well known to every Member that any person who has the means and cares to present a petition to Parliament, if he is in a position to demonstrate that adultery has been committed has a moral right to divorce. But in Ontario and Quebec, because they have no divorce courts, there is no legal right to divorce". Speech already quoted.

divorce becomes a law. The demand would no longer be for a dispense but for the application of the law. One has only to establish the fact that ours is one of the cases determined by the legislature and the tribunal is no longer free to refuse the divorce.

As we see, it is the indissolubility of marriage itself which is in question. It does not mean, once more, the replacing of one procedure by another procedure, but rather the replacing of the natural law and the law of God, by the law of divorce. We have above demonstrated that the family and society have nothing to gain by it.

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Supposing even that it would only mean a simple change of procedure, we should still oppose it since its sole aim

publicly admitted[1] by those who uphold the change, is to facilitate divorce and bring it within the reach of all.

No doubt if divorce were a benefit, if it be at least, the legitimate and necessary remedy of an evil, the last bars should be taken down, that prevent it from exercising such beneficial influence.

But, if it is—as we endeavoured to prove—the certain destruction at short notice of the family, and by that, of society of which it is the basis, we should either banish it altogether from our legislation or else, if we cannot altogether do that, at least make access to it more and more difficult.

Up to this divorce has remained in our country an exceptional case. The burdensome formalities to which it is sub-

(1) "The interests of the country to-day," said Mr. Nickle, "demand that something be done to facilitate divorce". Speech already quoted.

mitted, the publicity surrounding each demand, prevent it becoming general. Its ravages remain, therefore, circumcribed in certain determined centres. Establish, on the contrary, divorce courts, in each Province and you will see little by little the evil spread among all classes of society. Minds would become familiar with it; it would enter into the morals; and the day when it becomes incorporated in our morals the family will be a thing of the past.

What has happened in other countries should be a lesson for us. Therefore, while there were only in England during the two hundred years before the Divorce Act, 1857, 317 divorces, there were 6,381 in the thirty years that followed.

Not to go so far, we could establish the same truth by comparing in our own country, the number of divorces granted by existing courts and the number of

divorces granted by the Federal Parliament.

Statistics compiled for the first twenty years of Confederation show that the number of divorces granted by Parliament during that period, for the Provinces of Ontario and Quebec, where there were no divorce courts, was only 26, while in the Provinces of Nova Scotia, New-Brunswick, and British Columbia, where such courts were in existence, the number of judiciary divorces was 109. The ratio to population on the basis of the census taken in 1881 was for Quebec 1 to 194,146, for Ontario 1 to 101,222, for Nova Scotia 1 to 8,472, for New Brunswick 1 to 7,648, for British Columbia 1 to 3,297. The disproportion can be seen at a glance. A similar result is obtained if you compare figures for a later period. During the last session of this Parliament, the following statistics were put before the House of

Commons. From 1905 to 1918—thirteen years—the number of divorces granted by way of legislation for the Provinces of Ontario, Quebec, Alberta, Saskatchewan, and Manitoba was 244. For the same period the number of divorces granted by the courts of Nova Scotia, New Brunswick, and British Columbia was 380. The population of the former was 5,849,215 and the population of the latter was 1,236,707. Therefore, the ratio to population for the first five Provinces was 1 to 23,992, while it was for the three last 1 to 3,254."(1)

The comparison is still more striking if we make it between Canada and the United States. Therefore while the Federal Parliament granted only from 1867 to 1886, 116 divorces, the courts in

(1) *Quotation.* These lines are borrowed from the magnificent speech given 20 April, 1920, in the Senate by Hon. Thomas Chapais.

the United States had granted 328,716. By establishing a proportion between the number of divorces and the population in the two countries, we come to find 1 divorce in 37,983 persons in Canada, and to 1 divorce in 150 persons for the United States.

No doubt but we thought ourselves strong enough to circumscribe the ravages of this scourge that was let loose over the country. Other people had thought so too. But they found to their cost as we have said above, that it was easier to keep the door shut against passion and disorder, than to keep it half ajar once it was opened.

* * *

As to the reasons advanced in support of the new Bill, we must admit that they have not in the least convinced us.

First of all, is it really so unjust as is said to surround divorce with formalities which make it a thing of luxury not very accessible to the poorer classes? Why should we feel obliged to put it within the reach of those of small means? Is it a thing of immediate necessity? Is it not rather an evil that we should keep out and which we should at all events circumscribe as much as possible?

Doubtless with our present legislation the poor have not the same facilities as the rich to obtain divorce. But we find it is so much the better for them. The real happiness of the labouring man has always been to return, in the evening, from his day's weary toil, to the sweetness and peace of a home. Why do you wish to place before him the temptation of destroying it all? Why wish to give him and his family over to the vices which waylay the poor who have no firesides?

We may be permitted moreover to express our surprise at the sudden zeal of our Members of Parliament for the working classes. What have they done for them up to this? Long ago those in our country who have busied themselves with the labour question have sought the aid of the law against the criminal exploitation to which the workingman, and above all the working woman, have been subjected, and against the unprovided state to which they may be reduced by old age and unforeseen misfortunes. Is there not a more pressing need than that? Would it not be better to secure by legislation the ease and security of the poor man's cottage, rather than furnish him with a means of demolishing it at will?

In many cases at least, the interest of the poor seems rather to us to be an excuse. What is being sought is the ex-

pansion of the law at any price, and the suppression of the obstacles which still impede its application. We have seen in divorce a conquest of the modern spirit over the traditional and Christian spirit, and we have been following in the wake of other countries without considering the terrible lesson which experience has taught them.

Finally, if the poor and the rich are to be put upon the same footing, there is a way of doing it, which is at the same time very sure and inoffensive. It is the one proposed by Daniel O'Connell and it is this: "I wish as does the Honourable mover, that the poor be placed on the same footing with the rich; but I would accomplish that object not by giving it to the poor, but by refusing it to the rich."(1)

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(1) *Hansard's parliamentary debates*, 2nd series Vol. 24 P. 1024.

Let us now say a word about the principal argument of Mr. Nickle, that which offers the best chance of awakening serious minds; to wit: The overcrowding produced by the ever augmenting influx of petitions for divorce and the impossibility of examining them quickly.

That the Committee on Divorce should be overcrowded at this moment[1] depends for the greater part on the return of our soldiers. It would simply mean as we have said above to find for this temporary evil a temporary cure.

However, it is certain that the war is not the only cause for this overcrowding. The petitions for divorce are augmenting each year at an alarming rate. The Parliament which received only 7 petitions for divorce from 1867 to 1877, received 16 from 1877 to 1887; 36 from 1887 to 1897;

(1) There is at this moment, 140 petitions for divorce before the Senate (1st March, 1920).

53 from 1897 to 1907, and more than 200 from 1907 to 1917. Whence comes the inevitable delays which create displeasure and discredits the present procedure.

We do not, however, believe that we have any great reason to be troubled. Those who cry out against it so loudly forget one thing, namely, that they have no legal right to divorce. It is therefore not a bad thing to make them feel that divorce should not become general with us, that it should be only an exception. For our part we believe that the harder it will be to obtain, the greater the delays, the more formalities surrounding it, the better it will be.

Finally, if we must believe Mr. Nickle, Quebec and Ontario will be, within a few months perhaps, the only Provinces which have not divorce courts. As the Parliament has scarcely granted in Quebec an average of more than three divorces a

year[1] they could therefore consecrate all their time to examining the demands of the other Provinces.

* * *

But delays are not the only reproach we make to the Committee on Divorce; it is not even the principal one.

What is being reproached above all else, is that, according to a few Members, it is only a caricature of a court of justice.[2]

But precisely because it is not a court of justice, it is not its duty to apply a law, but to examine a Private Bill. It

(1) Exactly 38 in 13 years from 1905 to 1918.

(2) Mr. Northrop: "that procedure is too monstrously absurd to be described anywhere outside of a vaudeville show." (Speech of 14 February, 1916). Mr. Fielding: "machinery which cannot be called judicial and to which you can hardly properly apply any term of respect". (*Speech*, June 20, 1919.)

is, therefore, a commission analogous to the other commissions charged with examining Private Bills. And we think there is rarely a time that we cannot find among the Senators nine men, competent and trustworthy, capable, consequently of filling that office.

We have been assured that many divorces at the present time are secured by fraud. That may be quite possible, but it will always be thus, even if they succeed in establishing special courts of divorce. "Divorce" it has been said,[1] "will always be in itself an element of social disorganization. Wise men multiply formalities and erect bars against it. But it is of a nature to slide by obstacles and disappoint all previsions." The law of 1876 in France had not anticipated divorce by mutual consent; only less than a

(1) M. Morizot-Thibault: *La femme et le divorce; Questions actuelles:* Tome 60, page 38.

quarter century after Mr. Emile Faguet could write: "the nine-tenths of divorces granted yearly were divorces by mutual consent."(1) It is therefore not Parliament that is to blame but rather divorce iself.

No, we do not think that the alteration proposed would improve the situation; we believe on the contrary that it would aggravate it very much. If the present procedure is cumbersome and not satisfactory, that it does more harm than good—which is our opinion—let it be suppressed entirely.

Conclusion : Our conclusion will be brief. We content ourselves with putting, to those who wish to introduce the law of divorce amongst us, the following questions: "Will you, thereby, make the family stronger, more united? Will

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(1) Cf. Fonsegrive: *Mariage et union libre;* 3e édition, p. 69.

you raise the moral level of our country? Will you direct souls towards a higher conception of life? Will you increase the unity between families, between races, between the Church and the civil power?" Here are so many questions that a statesman, worthy of the name, is in duty bound to ask himself. Well then! let us study what goes on in other countries where divorce exists for some time past, and then make answer!

No doubt, such a law will not produce all these effects in a day. But it is a first step towards anarchy and decline, a first step consequently taken upon a downward path, whereon there is no halting. Our Members have not even got the excuse, when entering upon it, of being urged by public opinion. They are not fulfilling a vow, they are simply creating a want. Only, let them reflect well. This

opinion that they are about to direct towards divorce, will move quicker than they can, and will carry them one day further than they wish to go. Such laws as these pledge the whole future of a country; and it appears to us, that our Members of Parliament should think twice before pledging the future of our young country in such a way.